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Attorneys for plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

STEVEN AMES BROWN,
Plaintiff,

CIVIL NO. Cv. 08-02348 VRW

v.

ANDREW B. STROUD, an individual and
STROUD PRODUCTIONS AND
ENTERPRISES, INC.

DECLARATION OF STEVEN AMES
BROWN RE: FAILURE TO FILE
RULE 26 REPORT & JOINT CASE
MANAGEMENT STATEMENT

Defendants.

1 I, STEVEN AMES BROWN, declare:

- 2 1. I am the plaintiff in the within action.
- 3 2. On May 7, 2008 I received the Court's *Order Setting Initial Case Management*
4 *Conference and ADR Deadlines ("Order")*, Docket 2.
- 5 3. Among other things the *Order* directed the parties to "meet & confer" concerning
6 ADR and a discovery plan and to file an ADR stipulation by July 24, 2008 and to file
7 a Rule 26(f) Report and a Case Management Statement by August 7, 2008.
- 8 4. None of these assigned tasks has been completed and the purpose of this
9 declaration is to explain my non-compliance. In short, I was prevented from
10 complying by the Defendant's complete failure to cooperate
- 11 5. I personally assembled the "service packets" and included a copy of the *Order* in
12 each packet.
- 13 6. The proofs of service for the two defendants each reflects that the *Order* was in fact
14 served. *Docket 18, 19.*
- 15 7. On July 21, 2008, I wrote an email to defense counsel requesting cooperation in
16 discharging these obligations. A true copy of my email is attached as *Exhibit 1.*
- 17 8. My email requested cooperation in making the joint ADR filing. My email contained
18 my suggested approach (a settlement conference before a Magistrate Judge) and
19 had as an attachment my proposed filing.
- 20 9. I received no response from the defense and so I timely filed a unilateral *Notice of*
21 *Need.* *Docket 15.* The defendant filed no *Notice of Need.*
- 22 10. My email requested the ADR and Rule 26 "meet & confer". Defense counsel never
23 responded to my email and the deadline passed, with no conference having taken
24 place.
- 25 11. Having received no cooperation on my request for a "meet & confer", I had no basis
26 for preparing the joint reports as required by the *Order.*

1 12. At all times I was ready, willing and able to cooperate with defense counsel in
2 fulfilling the obligations imposed on us by the *Order*. I have received no response to
3 my email, *Exhibit 1*.

4 13. Had counsel responded to my "meet & confer" email or initiated any
5 communications on their own on this subject I would have done my utmost to timely
6 comply with the *Order*. However, having received no response whatsoever, I was
7 prevented from complying and there is insufficient time to prepare the reports now
8 for filing tomorrow.

9 14. Today I received a letter from counsel asking that the Case Management
10 Conference be continued. Attached as *Exhibit 2* is a true copy of that letter. My co-
11 counsel replied, a true copy of which is attached as *Exhibit 3*. My co-counsel and I
12 intend to execute a stipulation, as requested. However, inasmuch as I was
13 precluded from complying with the *Order* and there is insufficient time to comply
14 with tomorrow's deadline to prepare and file the reports, I felt it important to inform
15 the Court.

16 15. Thus, I ask the Court to excuse my noncompliance; to reset the compliance
17 deadlines and the Case Management Conference on the dates suggested in the
18 forthcoming stipulation or such other dates as may please the Court.

19
20 Pursuant to the laws of the United States, I declare under penalty of perjury the
21 foregoing is true and correct.

22 Dated: August 6, 2008

23 /x/
24 _____
25
26

Steven Ames Brown

From: Steven Ames Brown
Sent: Monday, July 21, 2008 9:19 PM
To: francis.torrence@wilsonelser.com
Cc: Therese Cannata
Subject: Brown v. Stroud
Attachments: Notice of ADR Need..pdf

Dear Ms. Torrence:

Pursuant to the Court's Order Setting Initial Case Management Conference we are obliged to file a Notice of Need of ADR Phone Conference no later than this Thursday. The only procedure I have ever had that produced a settlement was a conference before a Magistrate Judge. I have taken the liberty of preparing the form for e-filing and attach it for your review. If you would please let me know by Wednesday if your clients agree to a judicially supervised settlement conference I will e-file the form as is. If by that time you inform me that your clients do not agree to a judicially supervised settlement conference, I will change the form to so indicate and file it. If you do not consent to either filing by Wednesday, I will unilaterally file the form without your electronic signature.

We are also obliged to complete our Rule 26(f) meet and confer by this Thursday. We can confer through email or by phone. We leave the choice to you. If you prefer to meet by phone I suggest 10:00 a.m. on this Wednesday.

Respectfully,

Steven Ames Brown

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August 6, 2008

VIA FACSIMILE AND U.S. MAIL

Steven A. Brown, Esq.
Entertainment Law
69 Grand View Avenue
San Francisco, CA 94114-2741

Theresa Y. Cannata, Esq.
Cannata, Ching & O'Toole LLP
100 Pine Street, Suite 1775
San Francisco, CA 94111

Re: ***Brown v. Stroud***
Our File No.: 09887.00005

Dear Mr. Brown and Ms. Cannata:

It has come to my attention that there is a Case Management Conference scheduled for this upcoming Thursday, August 14, 2008. As you know from previous correspondence, I am on vacation next week (which is why we agreed to continue the hearing for the Motion to Dismiss). I was unaware that a CMC was scheduled for the same date, or else I would have suggested that we request moving it as well. (I note that it appears that the documentation regarding the CMC was not served on Mr. Stroud with the Complaint, but at this time that is mostly irrelevant.)

I propose that we agree to stipulate to continue the CMC. I would suggest we agree to move it to either the same time and date as the hearing on the Motion to Dismiss (August 21, 2008) if the Court will agree to do so, or alternatively, we could suggest a date out into September, say September 11, 2008, so that we have resolution of the motion to dismiss in advance of the CMC. Please let me know so that we can draft the Stipulation.

I also note that there is an ADR telephonic conference scheduled for Monday, August 11, 2008. Again, I am on vacation that week. I spoke with the ADR administrator and he indicated that we can agree to move the conference provided it takes place in advance of the CMC (whenever that ends up happening).

To: Steven A. Brown, Esq.

Therese Y. Cannata, Esq.

Re: *Brown v. Stroud*


August 6, 2008

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So please let me as quickly as possible if you are agreeable to moving the CMC.

Sincerely,

WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER LLP



Francis Torrence

FT/zk

CANNATA,
CHING &
O'TOOLE LLP
Attorneys at Law

Therese Y. Cannata
tcannata@ccolaw.com

August 6, 2008

By Telefax and U.S. Mail

Francis J. Torrence
Wilson, Elser, Moskowitz, Edelman & Dicker, LLP
525 Market Street, 17th Floor
San Francisco, CA 94105

Re: *Brown v. Stroud et al* (U.S. District Court, Northern District of California,
Case No. CV 08-2348)

Dear Mr. Torrence:

Thank you for your letter dated August 6, 2008.

As noted in Ms. Weydemuller's letter dated June 17, 2008, we are firm believers in reciprocal professional courtesies, and we therefore now agree to execute a stipulation to change the date of the Case Management Conference and the ADR telephonic conference.

However, that may or may not render moot the fact that you did not cooperate in the filing of the ADR request, the "meet & confer" or the two filings required by the May 7, 2008 Order. (Mr. Brown contacted you about this on May 21, 2008; to my knowledge, you did not reply.) I certainly hope the Court regards the noncompliance issues as moot and accepts our stipulation with new dates assigned, but until then the existing non-compliance issues will have to be addressed.

As for new dates, we accept your premise that it is prudent to wait until the motion to dismiss is decided. Although we expect the motion to be denied, we can understand that any moving party prefers to remain optimistic. That also would give us enough time for you to take your vacation and then upon your return, we can turn to the issues that you failed to address – the "meet & confer" and generation of the two reports for the Court in advance of the conference. One of the reasons initial case scheduling orders allow time between the "meet & confer" and the preparation of the two reports is so that the parties can sort out such issues as the location and accessibility of decades-old business documents, which we anticipate will be an issue here. Stated differently, I doubt we can adequately address the issues mandated by the May 7th Order until you can identify what documents have been located and can discuss their contents. To that end, it seems that your suggestion of a September 11, 2008 Case Management Conference is the earliest workable date.

Francis J. Torrence
August 6, 2008
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Any day that week or the next would also work for an ADR conference.

Please prepare a stipulation for our comments and execution and we will promptly respond. Please also be advised that Mr. Brown will be out of California between September 3rd through the 6th and therefore we cannot accomplish any joint tasks on those dates.

Very truly yours,

CANNATA, CHING & O'TOOLE LLP

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a horizontal line extending to the right.

THERESE Y. CANNATA

TYC

cc: Steven Brown (by email and U.S Mail)

800045.ltr.Torrence.8.6.08.tyc.wpd